

REMARKS

In an office action dated August 28, 2003, the Examiner rejected claim 33 because of a typographical error. The Examiner also rejected claims 1-6, 12-15, 17-19, 21-29, and 33-35 under 35 U.S.C. §103(a) as unpatentable over Gogan et al. ('232) in view of Weiss ('021). The Examiner rejected claim 20 under 35 U.S.C. §103(a) under Gogan in view of Meng and Albrecht. The Examiner indicated that claims 7-11, 16, and 30-32 are allowable if written in independent form.

Claim 33 has been amended to correct the typing error. Claim 3 has also been amended to correct a typing error.

Applicant respectfully submits that Examiners combination of Weiss and Meng with Gogan under 35 U.S.C. §103 is unsupported and requests that the objections on claims 1-6, 12-15, 17-20, 21-29, and 33-35 be withdrawn.

The Examiner has cited Seibel ('804) and Gogan ('232) as patents regarding quick release motorcycle accessories. These and other patents regarding motorcycle quick release accessories all use a cam locking device where a curved locking mechanism rotates around a bolt or other attachment point on the motorcycle to lock the accessory in place. There is no suggestion in these patents that other types of attachment and locking means could be used in a quick release motorcycle accessory. As shown in a declaration by Brant Monson the inventor, Harley-Davidson, a leading figure in motorcycles and motorcycle accessories, rejected the present invention because it did not have a cam lock mechanism. Harley-Davidson told the inventor that a sliding lock mechanism would be unsuitable for use in a motorcycle accessory and that a cam

lock as shown in the motorcycle accessory patents cited by the Examiner was necessary for this type of equipment.

The Examiner has cited patents regarding trailer couplings, scaffolding, and heavy machinery bucket attachment to indicate that it would have been obvious to one of skill in the art of motorcycle quick release accessories to use these types of couplings as a quick release attachment and lock. The Examiner has cited *In re Keller*, a 1981 case, for the proposition that all that is required for obviousness is to show “what the combined teaching of the references would have suggested to those of ordinary skill in the art” while ignoring the requirements of other more recent controlling opinions where the court of appeals has reinforced the requirement that “when patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence.” *In re Lee*, 277, F.3d 1338, at 1342 (Federal Circuit, 2002). In *In re Lee*, the examiner and Patent Appeals Board had held “that a “specific hint or suggestion” of motivation to combine was not required.” *Id.* The court overturned this holding and emphasized that “the examiner can satisfy the burden of showing obviousness of the combination only by showing some objective teaching in the prior art” and that “[t]his factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority.” *Id.* at 1343 -1344. Again referring to the examiner and board’s decisions that no “specific hint or suggestion in a particular reference” was required to support a finding of obviousness, the court explained that “Omission of a relevant factor required by precedent is both legal error and arbitrary agency action.” *Id.* at 1344. Thus, if

Keller stands for the position advanced by the examiner, it is clearly not good law in light of *In re Lee*.

As taught by *In re Lee* and “dozens of rulings of the Federal Circuit and Court of Customs and Patent Appeals [the] determination of patentability must be based on evidence.” *Id.* at 1345. The Examiner must show specific teachings in the cited references to combine the references and support a finding of obviousness. The Examiner has not met this requirement as there is no teaching, motivation, or suggestion in any of the references cited to combine the references as suggested by the Examiner. Moreover, as shown by the declaration of Brant Monson, those of skill in the art of motorcycle accessories viewed the use of a sliding pin locking mechanism instead of a rotating cam locking mechanism as not suitable for use in a motorcycle accessory.

Accordingly, Applicant respectfully submits that the rejection of claims 1-6, 12-15, 17-20, 21-29, and 33-35 under 35 U.S.C. 103 is improper and requests that the rejection be withdrawn.

Applicant therefore believes that all claims in the present application are in condition for allowance. Should the Examiner determine that further additional action be necessary, it is requested that she contact Applicants counsel, Randall B. Bateman at (801) 539-1900 so that such matters may be resolved as quickly as possible.

Respectfully Submitted,



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